UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC., Plaintiff, -against- NINTENDO CO., LTD. and NINTENDO OF AMERICA, INC., Defendants.	82 Civ. 4259 (RWS) RULE 3(G) STATEMENT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This statement is submitted pursuant to Local Rule 3(g) in support of the motion of defendants Nintendo Co., Ltd. and Nintendo of America, Inc. ("Nintendo") for summary judgment dismissing the complaint of plaintiff Universal City Studios, Inc. ("Universal"). Nintendo submits that there is no genuine issue to be tried as to the following material facts:

The Parties

1. Nintendo Co., Ltd. is a corporation organized under Japanese law and founded in 1889, having its principal place of business in Kyoto, Japan, and branches in five other Japanese cities. Nintendo Co., Ltd. is engaged in the manufacture, assembly and sale of video arcade games, hand-held video games, playing cards, mah-jong games, tuggle board games and amusement arcade games. Nintendo Response to Interrogatory 1.

42. Cooper is the owner of worldwide book publishing rights in King Kong, including the right to make, distribute or license novels, comic books or magazine articles using the name, character and story of King Kong. See Cooper Agreement: O'Neill Aff. Ex. 19, ¶ 3a; Regan Dep. 81-83.

43. There have been legends, myths and stories in various cultures over many centuries reflecting the themes of beauty and the beast and the theme of women and apes. Rovin Aff. ¶¶ 4-21.

44. There are innumerable published and commercial uses of the term "King Kong", and variations thereon, without any reference to the makers of the movie (Riggio Affidavit; Rovin Affidavit); numerous third party trademark registrations of the name "King Kong" or variations thereof (Lincoln Aff. ¶ 10); and numerous commercial uses of the character "King Kong," and graphic image "King Kong" or close facsimiles, without reference to the makers of the movie "King Kong" (Rovin Affidavit).

45. The Oxford English Dictionary defines King Kong as a common term used as a "nickname for anyone of outstanding size or strength" and as a slang term for "cheap alcohol." Oxford English Dictionary, Supplement Vol. 2, p. 511 (Oxford University Press 1976). Roget's Thesaurus identifies King Kong as a noun synonomous with terms such as monster, fiend, brute, etc. The Original Roget's Thesaurus, p. 93 (St. Martin's Press 1965; Dell 1966). The Dictionary of American Slang defines "King Kong" as "strong cheap whiskey or wine."

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